



Action Plan to Implement the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites March 5, 2013

Introduction

On December 5, 2012, the Departments of Defense, the Interior, Agriculture, and Energy, and the Advisory Council on Historic Preservation (participating agencies) entered into a Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites (MOU) to improve the protection of and tribal access to Indian sacred sites through enhanced and improved interdepartmental coordination and collaboration. The MOU is based on the requirements of Executive Order 13007, Indian Sacred Sites.

Executive Order 13007 requires that:

In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

The MOU will be in effect for five years and requires the participating agencies to establish a working group and develop an action plan for the purpose of carrying out the provisions of the MOU in consultation with Indian tribes.

Mission Statement

The mission of the Working Group is to work together to improve the protection of and tribal access to Indian sacred sites, in accordance with Executive Order 13007 and the MOU, through enhanced and improved interdepartmental coordination and collaboration and through consultation with Indian tribes.

Definitions

Participating agency means any federal agency that enters into the MOU as evidenced by an agency official signature on the MOU.

Sacred site for purposes of this Action Plan and the MOU, has the same meaning as provided in Executive Order 13007; that is, “ - any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.”

The participating agencies acknowledge that such sacred sites may also be eligible for the National Register of Historic Places as historic properties of religious and cultural significance to Indian tribes. Sacred sites may include, but are not limited to, geological features, bodies of water, archaeological sites, burial locations, traditional cultural properties, and stone and earth structures.

Indian Tribes means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior has published on the list of federally-recognized tribes pursuant to Public Law No. 103-454, 108 Stat. 4791.

Guiding Principles

The participating agencies are committed to interagency coordination and collaboration to enhance the protection of and tribal access to Indian sacred sites. The participating agencies:

- Will consult with Indian tribes, as appropriate, in developing and implementing the actions outlined in this plan;
- Recognize that consistency in policies and processes can be developed and applied, as long as such policies and processes remain adaptable to local situations and mission requirements; and
- Recognize that tribal input is essential to ensure that tribal perspectives are incorporated into the actions undertaken pursuant to the MOU and to ensure the development of meaningful strategies for sacred sites protection.

Action Plan

The action plan is a dynamic strategy for meeting the requirements of the MOU. As such, the participating agencies through the executive and core working groups will review the plan periodically, update it when necessary, and ensure that Indian tribes are kept informed of such updates.

Each of the following headings relates to the action items outlined in the MOU and agreed upon by the participating agencies. The participating agencies intend to carry out the provisions of the MOU in phases. The first phase will be to gather information about existing resources that may meet the action items of the MOU and action plan. The second phase will be an evaluation of those resources and the development of plans to produce additional tools, if needed, to meet the actions. The third phase will be the development of recommendations and additional tools that enhance agency protection of and tribal access to Indian sacred sites.

Working Groups

Implementation of the MOU requires both leadership and staff level involvement of participating agencies. To accomplish the action plan, there will be two working groups. The first is the Executive Working Group, which is comprised of senior executives from all participating agencies. The Executive Working Group will make final decisions and be the representatives in government to government consultations. The second is the Core Working Group, which is made up of senior Department-level staff members, who will serve as the lead point of contact for their agencies. The Core Working Group will identify subject matter experts (SME), as appropriate, from the respective sub-agencies within their agencies. The role of the SMEs is to provide the Core Working Group with input and perspectives on a variety of subject areas, as necessary to guide implementation of the MOU.

More information on both working groups is available at Appendix A.

Evaluation of Existing Authorities

The Working Groups will:

1. Review the following authorities to determine their potential relevance to sacred sites:
 - Executive Order 13007: Indian Sacred Sites
 - National Historic Preservation Act
 - National Environmental Policy Act
 - Native American Graves Protection and Repatriation Act
 - American Indian Religious Freedom Act
 - Religious Freedom Restoration Act
 - Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - Executive Order 12898: Environmental Justice
2. Identify, based on the review, impediments to federal-level protections for sacred sites; determine if additional interagency measures may be warranted to better protect sacred sites; and make recommendations to the Executive Working group that address the impediments.

Training Program

The Working Groups will:

1. Identify existing training resources for the:
 - a. legal protections and limitations regarding the accommodation of, access to, and protection of sacred sites; and
 - b. effective consultation and collaboration with Indian tribes, tribal leaders, and tribal spiritual leaders to address sacred sites
2. Identify needs for developing or acquiring additional training resources;
3. Make recommendations for training delivery; and
4. Develop appropriate training and/or modules within existing training programs.

Development of Guidance

The Working Group will:

1. Gather existing federal guidance regarding the management and treatment of sacred sites including examples of best practices and agreements;
2. Identify information and document gaps and draft guidance to fill the gaps; and
3. Make guidance available on a new website created in accordance with the MOU

Creation and Maintenance of the Website

The Working Group will:

1. Identify a participating agency or agencies to host a publicly accessible website;
2. Create structure, functionality, and base content for a website; and
3. Post information, materials, and links as appropriate

Public Outreach Plan

The Working Groups will:

1. Identify existing resources for a public outreach plan; and
2. Develop and implement a public outreach plan that focuses on the importance of maintaining the integrity of sacred sites and the need for public stewardship in the protection and preservation of such sites. The public outreach plan will include steps to appropriately reach out to the general public.

Confidentiality Standards

The Working Groups will:

1. Compile and review existing requirements and authorities for maintaining the confidentiality of sensitive information about sacred sites and analyze the effectiveness of these mechanisms including the identification of similarities, differences, and gaps in the protections afforded sacred sites; and
2. Develop recommendations for addressing challenges regarding confidentiality and potential policy changes.

Management Practices

The Working Groups will:

1. Compile and analyze examples and case studies of relevant management practices; and
2. Establish model practices and include them on the web site, in the training program, and distribute them through other mechanisms.

Interagency Expertise and Contracting with Indian Tribes

The Working Groups will:

1. Identify a range of mechanisms for exchanging and sharing personnel among Federal agencies and Indian tribes;
2. Develop model agreements and other tools to expedite exchanging and sharing personnel;
3. Identify and recommend categories of personnel that would contribute to the goals of the MOU through exchanging and sharing; and
4. Develop model contracting mechanisms for obtaining appropriate federal and tribal expertise.

Outreach to Non-Federal Partners

The Working Groups will:

1. Identify and review existing methods for outreach to non-federal partners including state and county governments, non-profits and other non-governmental organizations;
2. Develop an outreach plan template that can be customized for use by each participating agency, and which is also available to other agencies who might want to improve their outreach on sacred sites, and compile associated outreach materials; and
3. Recommend an outreach process and associated materials to other interested parties.

Building Tribal Capacity

The Working Groups will:

1. Compile existing information about building tribal capacity to participate fully in consultation and the identification, evaluation, and protection of sacred sites;
2. Analyze compiled information and share with Indian tribes for initial feedback; and
3. Recommend steps to build tribal capacity.

Appendix A: Working Groups

Executive Working Group

Implementation of the MOU and its action plan requires both leadership and staff level involvement of the participating agencies. Therefore, an Executive Working Group comprised of senior executives from all participating agencies will be established.

Core Working Group

A Core Working Group comprised of agency staff representatives has been established and is responsible for coordinating all staff work under the MOU and plan. The Department of the Interior representative will serve as the chair for the Core Working Group for the initial two-year term.

These individuals may be contacted for questions regarding either the MOU or the action plan. The members are:

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